480.

SUPREME COURT OF THE UNITED STATES.

No. 37.

PHILIP MINIS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF GEORGIA.

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S. D. Langtree, Print.

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DISTRICT OF GEORGIA.

To the honorable the judge of the district court for the said district, the petition of the United States of America, sheweth:

That Philip Minis of the said district is indebted unto the said the United States of America, in the sum of thirteen thousand five hundred and eighty-nine dollars and five cents, exclusive of interest. For that whereas, the said Philip Minis, on the eleventh day of May, in the year of our Lord one thousand eight hundred and thirty-eight, within the district aforesaid, and the jurisdiction of this honorable court, was indebted to your petitioners, in the sum of thirteen thousand five hundred and eighty-nine dollars and five cents, for money then and there lent by your petitioners to the said Philip Minis, at his request. And in the sum of thirteen thousand five hundred and eighty-nine dollars and five cents, for money then and there paid by your petitioners for the use of the said Philip Minis, at his request; and in the sum of thirteen thousand five hundred and eighty-nine dollars and five cents, for money then and there received by the said Philip Minis for the use of your petitioners; and in the sum of thirteen thousand five hundred and eighty-nine dollars and five cents, for money found to be due from the said Philip Minis to your petitioners on an account then and there stated between them.

And whereas the said Philip Minis, afterwards to wit: on the day and year aforesaid, in the district aforesaid, in consideration of the premises respectively, then and there promised to pay the said several monies respectively, to your petitioners on request. Yet the said Philip Minis, although often required, has not paid any of the said sums of money or any part thereof, but has refused, and still refuses, to the damage of the United States of America, fifty thousand dollars.

Wherefore, that the said United States of America, prays process may issue, requiring the said Philip Minis, personally, or by attorney, to be and appear before the judge of said court, at a court to be held at Savannah, on the second Tuesday of August next, to answer to the United States of America, in an action on the case and so forth.

JOHN E. WARD,
District Attorney.

DISTRICT OF GEORGIA.

In the district court for said district. *August Term*, 1838.

[L. S.] G. GLEN, *Clk.*

THE UNITED STATES OF AMERICA.
vs.
PHILIP MINIS. } Case.

The President of the United States, to the Marshal of the district of Georgia, greeting:

The defendant, Philip Minis, is hereby required, personally, or by attorney, to be and appear before the honorable the judge of the district court, at Savannah, at a court to be held on the second Tuesday of August next, to answer to the United States of America, in an action on the case to their damage, fifty thousand dollars, as in default of such appearance, the said judge will proceed as to justice shall appertain.

Witness the honorable Jeremiah Cuyler, judge of said court, this thirtieth day of May, one thousand eight hundred and thirty eight.

JOHN E. WARD,
United States' Attorney.

Legal service acknowledged, this 30th May, 1838.
PHILIP MINIS.

Filed, 1 June, 1838. GEO. GLEN, *Clk.*

Dr. *Philip Minis, Surgeon, Mil. Dis. Agent,*

1836.		Cherokee treaty per Act 2d July, 1836.	Payment for improvements per Act 26 June, 1834.	Total.
Oct. 15	To Requisition on the Treasury, for 7672 issued on account - -		1,732 61	1,732 61
22	To Requisition on the Treasury, for No. 7694 issued on account - -	4,000		4,000
29	To Requisition on the Treasury, for No. 7725 issued on account - -	8,505		8,505
Nov. 3	To Requisition on the Treasury, for No. 7736 issued on account - -	50,000		50,000
5	To Requisition on the Treasury, for No. 7740 issued on account - -	200,000		200,000
Dec. 29	To Requisition on the Treasury, for No. 7954 issued on account - -	250,000		250,000
1837. Feb. 9	To Requisition on the Treasury, for No. 8100 issued on account - -	80		80 00
		$512,585	1,732 61	514,317 61
	To Balance per Contra, - - - -	$15,009 05	527 13	15,536 18

TREASURY DEPARTMENT,
Second Comptroller's Office, August 25th, 1837.
Exd. JNO. DAVIS, *Clerk.*

REPORT.

No. 1600.

TREASURY DEPARTMENT,

SECOND AUDITOR'S OFFICE.

21 *August*, 1837.

I certify that I have examined and adjusted the account of Dr. Philip Minis, Mil. Dis. Agent, and find that he stands charged on the books of this office with the following Requisitions, viz.: Nos. 7672, 7694, 7725, 7736, 7740, 7954, & 8100, issued 15th, 22d, and 29th October, 3d and 5th November, 29th December, 1836, and 9th February, 1837, amounting to - - - - - - - - $514,317 61

That he is entitled to credit, by disbursement at New Echota, 4th qr. 1836, and 1st and 2d qrs. 1837,	$394,694 60	
By St. J. Van Horn, for amount advanced him 4th April, 1837, - - - - - -	7,000 00	
By Capt. J. P. Simontin, for amount advanced him 2d May, 1837, - - - - - -	97,086 83	498,781 43
Balance due United States		$15,536 18

in account with the United States. Cr.

1837.		Cherokee treaty per Act 2d July, 1834.	Payments for improvements, per Act 28 June, 1834.	Total.
	By St. J. Van Horn, for amount turned over to him 4th April, 1837, receipt herewith - - - - -	7,000		7,000
	By Capt. J. P. Simontin, for amount turned over to him 2d May, 1837, receipt herewith - - - -	97,086 83		97,086 83
	By appropriation for disbursement at New Echota, 4th qr. 1836, 1st and 2nd qrs. 1837, removing and subsisting Cherokee Indians, and in fulfilling stipulations of Cherokee Treaty of 29th Dec. 1835, per accounts, abstracts, and vouchers herewith filed - - - -	393,489 12	1,205 48	394,694 60
	Balance	15,009 05	527 13	15,536 18
	Dolls.	512,585 00	1,732 61	514,317 61

TREASURY DEPARTMENT,
Second Auditor's Office, 21*st August*, 1837.
CHS. W. FOREST.

REPORT.—Continued.

Cherokee Treaty, per Act 2d July, 1836, - $15,009 05
Payment for improvements, 28th June, 1836 - 527 13

As appears from the statement and vouchers herewith transmitted for the decision of the Second Controller of the Treasury thereon.

W. B. LEWIS,
Second Auditor.

TO THE SECOND COMPTROLLER OF THE TREASURY.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above, this twenty-fifth day of August, 1837.
ALBION K. PARRIS,
Second Comptroller.

Dr. *Philip Minis, Surgeon, Mil. Dis Agent,*

1837.		Cherokee treaty per Act 2d July, 1836.	Payment for improvements per Act 28 June, 1834.	Total.
Aug. 25.	To balance per settlement - -	15,009 05	527 13	15,536 18
		15,009 05	527 13	15,536 18
	To balance per contra - - -	$13,589 05		13,589 05

TREASURY DEPARTMENT,
Second Comptroller's Office, January 17, 1838.
Examined. JNO. DAVIS, *Clerk.*

REPORT.

No. 2005.

TREASURY DEPARTMENT,

SECOND AUDITOR'S OFFICE,

15 *January*, 1838.

I certify that I have examined and adjusted the account of Dr. Philip Minis, Mil. Dis. Agent, and find that he stands charged, on the books of this office, to balance on settlement, 25 Aug. 1837 - - - - - - $15,536 18

And that he is now entitled to credit:

By Capt. J. P. Simontin, for this sum advanced him, 5 July, 1837 - - - - -	527 13	
By appropriation, for travelling expenses, while disbursing agent, Cherokee removal, commencing 15 Oct. 1836, and ending 25 July, 1837, at $5 per day - - - - - -	1,420 00	1,947 13
Balance due United States		$13,589 05

Philip Minis vs. *United States.*

in account with the United States. *Cr.*

1837.		Cherokee treaty per Act 2d July, 1836.	Payment for improvements per Act 28 June, 1834.	Total.
	By Capt. J. P. Simontin, for this sum turned over to him, 5th July, 1837, per receipt herewith - - -		527 13	527 13
	By appropriation, for actual travelling expenses, whilst disbursing agent, Cherokee removal, 284, commencing 15th October, 1836, and ending 25th July, 1837, at $5 per day -	1,420		1,420
	Balance -	13,589 05		13,589 05
		$15,009 05	527 13	15,536 18

TREASURY DEPARTMENT,
Second Auditors Office, January 15, 1838.

CHS. W. FORREST.

REPORT—Continued.

Cherokee treaty, per Act 2nd July, 1836.

As appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

W. B. LEWIS,
Second Auditor.

To the SECOND COMPTROLLER OF THE TREASURY.

SECOND COMPTROLLER'S OFFICE,

I admit and certify the above, this seventeenth day of January, 1838.

ALBION K. PARRIS,
Second Comptroller.

Statement of difference arising on settlement of the account of Dr. Philip Minis, Mil. Dis. Agent, New Echota, for the 3d *quarter,* 1837.

Balance due U. States per official statement -		$13,589 05
		1,066 46
Difference		$14,655 51
Which arises thus:		
On settlement of 25th August, 1837, abstract trans. and subsistence, Voucher No. 6, receipted by John W. West as attorney for John West: John W. West is authorized to receipt for amount due John West on account Improvements abandoned *only;* suspended - - -	$1,173 33	
Voucher 65, paid Jonathan and Maria Mulkey $426 64 receipted for $266 64; difference disallowed - - - -	160 00	
Abstract Subsistence Voucher No. 17, paid Beaent, receipt not witnessed; suspended - - - - - - -	300 00	
Ann Howell $135, charged $135 50; difference disallowed - - - -	50	
Voucher No. 71, paid Big Milk $107 charged $107 50; difference disallowed	50	
Voucher 217, Jack Taylor receipts for $90, charged $94; difference disallowed -	4 00	
Requisition on Treasury, No. 8100, issued 9th February, 1837, being in payment of a draft drawn by Richard M. Johnson, 6th February, 1837, on C. A. Harris, on account of the sum due Joel Yancey; not acknowledged by Dr. Minis, - -	80 00	
On settlement of 17th January, 1838, Voucher No. 2, Dr. Minis charges for his transportation from New Echota to Washington, journey not authorised; disallowed, - - - - - -	82 00	
Dr. Minis charges two and a half per cent. commission for disbursing $514,237 61; disallowed. The Act of 3d March, 1835, prohibits the allowance of "any per cent. or additional pay, extra allowance, or compensation in any form whatever, on account of the disbursing any pub-		

Statement of difference arising on settlement of the account of Dr. Philip Minis, Mil. Dis. Agent, New Echota, for the 3d quarter 1837.

lic money, unless authorised by law,"	12,855 94 1-2	
Add fractions, - - - - -	4 1-2	
	$14,656 28	
From which deduct paid Justice Fields, interpreter, $132 50, charged $132 only; credit difference, -	50	
Paid Jno. Ridge, No. 187, $832 52, charged on abstract $832 25-100; credit difference, - - - -	27	77
Difference accounted for,	$14,655 51	

TREASURY DEPARTMENT,
Second Auditor's Office, 15*th January*, 1838.

TREASURY DEPARTMENT,
Second Auditor's Office, 11*th May*, 1838.

Pursuant to the Act of Congress of 3d March, 1817, entitled "An Act to provide for the prompt settlement of public accounts," I, William B. Lewis, Second Auditor of the Treasury Department, do hereby certify that the foregoing is a true transcript from the books and proceedings of the Treasury.

W. B. LEWIS.

Be it remembered, that William B. Lewis, Esquire, who certified the foregoing transcript, is now, and was at the time of doing so, Second Auditor of the Treasury of the United States, and full faith and credit are due to his official attestations.

In testimony whereof, I, Levi Woodbury, Secretary of the Treasury of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this Department, at the city of Washington, this twelfth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

[L. S.]

LEVI WOODBURY,
Secretary of the Treasury.

Plea.

THE UNITED STATES OF AMERICA
vs.
PHILIP MINIS.
} Case. No. 8. *August Term*, 1838, *February Term*, 1839.

And the said defendant, by Jonn C. Nicoll, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise, in manner and form as the said plaintiffs have above thereof declared against him, and of this he puts himself upon the country, &c.

JOHN C. NICOLL,
Defts. Atty.

And the said plaintiffs do the like.

JOHN E. WARD,
Dist. Atty.

At a district court of the United States for the district of Georgia, begun and holden in the city of Savannah, on the second Tuesday in August, in the year of our Lord one thousand eight hundred and thirty-nine, before the honorable John C. Nicoll, judge of the said court, came the said parties, to wit:

THE UNITED STATES OFAMERICA
vs.
PHILIP MINIS.
} Case.

The judge of this court having been of counsel for the defendant in the aforesaid action, it is ordered, on the application of the Attorney of the United States for the district of Georgia, that such fact be entered on the records of the court; and it is also ordered that an authenticated copy of the aforesaid order, with all the proceedings in the said action be forthwith certified to the next circuit court for this district. 13 August, 1839.

SIXTH CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF GEORGIA. *May Term*, 1840.

And now, on the ninth day of June, in the year of our Lord eighteen hundred and forty, being a day of the term of the circuit court of the United States for the district of Georgia, begun and held in the city of Savannah, on the Thursday after the first Monday in May, in the year aforesaid, before the honorable James M. Wayne, came the said parties as follows, to wit:

THE UNITED STATES OF AMERICA
vs.
PHILIP MINIS. } Case.

Jury sworn, viz.: 1 Y. S. Pickard, Foreman. 2 David Veader. 3 George I. Henly. 4 P. B. Prendergast. 5 H. H. Baker. 6 Samuel Johnston. 7 William S. Thompson. 8 Charles Boyd. 9 Francis Barbee. 10 William T. Baker. 11 John Cass. 12 Mordecai S. Delyon.

Captain John Mackay of the United States Army, a witness on the part of the defendant, was sworn and examined as to the charge for fuel, quarters and travelling expenses to Washington to settle accounts. He said that he was in the Cherokee country about the same time that Doctor Minis was, and that he had been allowed for fuel and quarters the sum charged by Doctor Minis—that such charges were always allowed to officers on duty. That travelling expenses were always allowed when an officer was ordered to Washington to settle his accounts—that he had known officers to go to Washington to settle their accounts without being ordered, and the Department had allowed the charge for travelling expenses. He thought that where the accounts were large and complicated, that the officer should be allowed his travelling expenses to Washington, if, in his judgment, his presence was necessary to the settlement of his accounts.

Prayer on the part of the defendant for Instructions to the Jury.

PHILIP MINIS
ads.
THE UNITED STATES. } Cir. Court, U. S. *May Term*, 1840.

Whereupon the said counsel for the defendant did then and there pray the judge of the said court to give the following Instructions to the jury.

1st. That the clause in the act of Congress of the 3d March, 1835, and which is relied upon as the authority by which the defendant's claim for commissions was rejected, does not apply to defendant's case, because it expressly refers to monies appropriated during that session of Congress, and therefore the 2d Auditor erred in disallowing the charge for commissions.

2d. That Dr. Minis was entitled to the commissions charged by him, as well from the long established practice of the Government, as from the law of the land, there being no law prior to the 3d March, 1839, disallowing commissions on monies disbursed for the Government.

3d. That the charge for commissions should be allowed because the charge is made for the disbursement of monies appropriated

during the session of 1836 and 1837, and therefore, neither the act of 1835 nor of 1839, is applicable.

4th. That the amount of West's account should have been allowed as a credit to Dr. Minis, because the same was paid in good faith by him, and that the United States should not discredit the act of their own agent.

5th. That as Dr. Minis's duty was to pay money upon the requisitions of the Superintendant and Commissioners, he was fully authorized to pay West's account to any one who had possession of the account thus passed and certified to by the Superintendent, and that this case was still stronger, because John W. West was the acknowledged attorney of Jacob West, and had before received money from Doctor Minis as disbursing agent.

Which instructions the said judge refused to give, but instructed the jury, "that in the relation which the defendant had stood to the United States as an officer in the army, he had no claim by law for commissions on the sum disbursed by him, whatever interpretation might be given to the concluding proviso of the act of the 3d March, 1835: and admitting that such proviso was limited to a prohibition of per cent. additional pay, extra allowance or compensation on account of disbursing any public money appropriated by law during the session of Congress when the act was passed containing the proviso—that said proviso could not be interpreted to give commissions or per cent. upon disbursements of antecedent or subsequent appropriations of money by Congress, unless the same were authorized by law, and that no law authorized the defendant to charge commissions, and therefore that the 2d Auditor had not erred in disallowing commissions to the defendant."

Whereupon the said counsel, on behalf of the said defendant, did then and there except to the opinion of the said judge, and insisted on the several matters and proofs as an absolute bar to the said action. And inasmuch as the said several matters so produced and given in evidence on the part of the said defendant, and by his counsel aforesaid insisted on as a bar to the aforesaid action, do not appear by the record of the verdict aforesaid, the said counsel for the aforesaid defendant did then and there propose their aforesaid exceptions to the opinion of the said judge to put his seal to this Bill of Exceptions pursuant to the statutes in such case made and provided: and thereupon the honorable James M. Wayne, judge, at the request of the said counsel for the above named defendant, did put his seal to this Bill of Exceptions, pursuant to the statute in such case made and provided.

JAMES M. WAYNE,
Associate Justice,
Sup. Co. U. States.

THE UNITED STATES *vs.* PHILIP MINIS. } 6th Cir. Court U. S. Dist. of Georgia. *May Term*, 1840.—Case.

The counsel for the United States prays the court to instruct the jury,

1st. That by law the defendant is not entitled to the commissions he has charged.

2d. That the amount of West's account ought not to be allowed, unless they should believe that there was proof that John W. West was the agent of Jacob West, or that J. W. West had authority to receive the same.

Which Instructions, as prayed for by the counsel of the United States, the court gave.

THE UNITED STATES OF AMERICA *vs.* PHILIP MINIS. } Case.—Verdict.

We find for the plaintiffs the sum of eleven thousand four hundred and sixty-one dollars and fifty-six cents, with interest, at six per cent., from 15 January, 1838, and costs of suit.

Savannah, June 9, 1840.

Y. S. PICKARD, *Foreman.*

DISTRICT OF GEORGIA, SIXTH CIRCUIT COURT OF THE UNITED STATES.

THE UNITED STATES OF AMERICA *vs.* PHILIP MINIS. } Case.—*May Term*, 1840.

Afterwards, to wit: on the ninth day of June, one thousand eight hundred and forty, before the judge of the said court came the within named plaintiffs by their attorney within named, and the said defendant by his attorney within named; and the jurors of the jury whereof mention is within made, being called, elected, tried and sworn, likewise come, who to speak the truth of the within contained, upon their oaths, say, they find for the plaintiffs the sum of eleven thousand four hundred and sixty-one dollars and fifty-six cents, with interest at six per cent., 15th January, 1838, and costs of suit.

Therefore it is considered that the said plaintiffs do recover against the said defendant, their damages aforesaid, in form aforesaid found; and also, twelve dollars and fifty cents for their costs and charges aforesaid, to the said plaintiffs by the said court now